IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4138 of 1999

For Approval and Signature:
HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VETERINARY SCIENCE AND ANIMAL HUSBANDRY COLLEGE - Petitioner(s)
Versus
MANUBHAI MANGALBHAI PADHIAR C/O AKHIL GUJARAT GENERAL - Respondent(s)

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Appearance :
MR DG CHAUHAN for Petitioner(s) : 1,
MR ASHISH H SHAH for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 06/08/2007

ORAL JUDGMENT

1. Heard Mr.D.G. Chauhan, learned counsel for the petitioner and Mr.Ashish H.Shah, learned counsel for the respondent.

2. The petitioner establishment, being aggrieved by the award dtd.11/1/1999 passed by the Labour Court, Anand in Reference (LCA) No.111 of 1992 (Old Reference No.256 of 1985), is before this Court under Article 227 of the Constitution of India, challenging legality, validity and propriety of the said award, where-under the learned Labour Court had directed reinstatement with 50% back wages and consequential benefits in favour of the respondent workman.

3. Mr.Chauhan, after taking me through the pleadings and the documents annexed with the writ application, submitted that the court below was unjustified in presuming that the petitioner establishment had terminated the respondent workman. According to him, there was nothing on record on the basis of which it could be held that the petitioner had terminated the services. He also submitted that the respondent was arrested in an criminal offence, the charges levelled against him were under secs.363, 366, 376 and other serious offence, all read with sec.114 of Indian Penal Code and under the circumstances, even if he was acquitted by the Criminal Court extending benefit of doubt in his favour, an order of reinstatement should not be made. He also argued that

"such a person is not entitled to reinstatement and back wages."

4. Mr.Shah, learned counsel for the respondent workman, on the other hand, submits that the court below was absolutely justified in making the award in favour of the respondent workman.

5. It appears that after the criminal case was registered against the respondent, he was taken into custody. Almost after a period of about nine months, the workman had gone to the Labour Court on 12/2/1985. Only thereafter, vide notice dtd.8/3/1985, the petitioner institution issued a notice to the respondent workman to show cause in relation to his unauthorised absence. It is, however, to be noted that from the date of registration of the offence, at least for a period of eight/nine months, the workman was behind the bars and because of his illegal detention, he was unable to attend to the services.

6. Mr.Chauhan also contended that the petitioner had asked the respondent workman to join the duties and even in their written statement they had submitted that they were ready and willing to reinstate the respondent workman, therefore, present is a case where any part of the back wages could not have been allowed.

7. So far as the submission that the petitioner was ready and willing to reinstate the respondent workman is concerned, a plea raised by the petitioner would not provide any solace to the petitioner, because, even after raising the plea they did not request the Labour Court to issue any direction to the respondent to join at the workplace, they contested the litigation for long many years and tried to see that the reference is ultimately rejected. Even after the reference was answered in favour of the workman, the petitioner did not reinstate the respondent workman but by filing this petition secured an order on 27/3/2000 in relation to stay of the operation of the award. If this is the conduct of the petitioner then any alleged offer by them for reinstatement of the respondent would be an eye wash.

8. The petitioner's submission that they had called the respondent workman to join the services vide their notice dtd.12/2/1985, is concerned, I must immediately reject the same because in the chronological synopsis of the the writ application it is stated that the petitioner issued show cause notice to the respondent workman to explain his unauthorised absence. If the petitioner was asking for an explanation then, such a notice would not amount to

ask the respondent to come and join the duty. So far as the findings of the learned Labour Court regarding termination of the respondent's services, are concerned, this Court must hold that the court below was justified in holding that the respondent was terminated, the findings stands strengthened by the conduct exhibited by the petitioner. If the petitioner had not terminated their services, then they could immediately ask the respondent workman to join the duties or could at list sand him a notice after the respondent workman was released on bail or at least after he was acquitted that the respondent workman may come to join the duty. The conduct exhibited by the petitioner would provide a sufficient foundation to hold that, in fact, they terminated the services of the respondent workman.

9. It was lastly submitted that the court below should not have awarded back wages to the extent of 50% and other consequential benefits.

10. In a case where a person is terminated from services without any rhymes or reasons and the employer fails to justify his illegal action, ordinarily full back wages and consequential benefits should follow the order of reinstatement. In the present case, the court below had

already shown clemency in favour of the petitioner by directing payment of 50% back wages.

11. Even on merits I am unable to hold that the court below was unjustified in directing reinstatement with 50% and consequential benefits.

12. The petition deserves to and is accordingly dismissed. Rule is discharged. Interim relief is vacated. No costs.

(R.S. GARG, J.)

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